

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

HEADWATER RESEARCH LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD and
SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants.

Case No. 2:23-CV-00103-JRG-RSP

DEFENDANTS' MOTION FOR LEAVE TO SUPPLEMENT EXPERT REPORTS

Defendants Samsung Electronics Co., Ltd and Samsung Electronics America, Inc. (collectively “Samsung”) respectfully move for leave to serve supplement rebuttal expert reports in response to (1) Headwater’s service of supplemental opening reports and (2) Mr. de la Iglesia’s claim construction opinion first disclosed during his deposition on October 30, 2024.

Samsung’s proposed supplements are narrowly tailored to this new information. Plaintiff Headwater Research LLC (“Headwater”) has articulated no objection as to supplementation on the first issue but opposes supplementation on the second issue.

I. THE COURT SHOULD PERMIT SAMSUNG TO RESPOND TO HEADWATER’S SUPPLEMENTAL REPORTS

On November 1, 2024, Headwater moved for leave to serve supplemental expert reports related to certain discovery obtained after opening reports. Dkt. 194. For the reasons set forth in Samsung’s response to that motion (Dkt. 239), Samsung respectfully requests leave to respond to those supplemental reports. On November 6, 2024, before completion of Dr. Foster’s deposition, Samsung shared Dr. Foster’s response to Mr. de la Iglesia’s supplemental report. Ex. 1 (Foster Supp. Rpt.) ¶¶ 1-9, 12-27, 35-45. Similarly, on November 15, Samsung shared Dr. Perryman’s response to Mr. Dell’s supplement. Ex. 2 (Perryman Supp. Rpt.) ¶¶ 1-11, 16.

II. THE COURT SHOULD GRANT SAMSUNG LEAVE TO SUPPLEMENT EXPERT REPORTS TO ADDRESS RELATEDLY DISCLOSED CLAIM CONSTRUCTION OPINIONS

Mr. de la Iglesia never disclosed, in either of his reports, that he was applying a claim meaning other than the plain and ordinary meaning or the Court’s constructions. Ex. 3 (de la Iglesia Op. Rpt.); Ex. 4 (de la Iglesia Reb. Rpt.). Throughout the claim construction process, Headwater disclosed that terms should only be given their plain and ordinary meaning. Dkt. 101-1 (Joint Claim Construction Statement). Yet, during his deposition on October 30, 2024, Mr. de la Iglesia opined that the “application identifier” of the ’117 patent claims must identify “*only one*

software process for forwarding the application data.” Ex. 5 (de la Iglesia 10/30/24 Dep. Tr.) at 392:19-394:25 (emphasis added).

As this claim construction opinion was not previously disclosed, either during the Patent Local Rules’ required claim construction disclosures or in Mr. de la Iglesia’s opening or rebuttal report, Dr. Foster could not have considered this opinion earlier. It would be unfair to allow Mr. de la Iglesia to inject a new claim construction opinion without permitting Dr. Foster to address it. Paragraphs 10-11 and 38-44 of Dr. Foster’s supplemental report are confined to doing so. Ex. 1. Those responsive opinions include the identification of an additional non-infringing alternative. *Id.* ¶¶ 33-34. That identification impacts Dr. Perryman, Samsung’s damages expert. Dr. Perryman’s supplement report briefly and narrowly addresses Dr. Foster’s supplemental opinions. Ex. 2 ¶¶ 12-15. It would hardly be a fair result if Headwater’s experts could rely on a claim construction opinion while Samsung’s experts could not, where Headwater did not reveal this claim construction until expert depositions—well after claim construction proceedings and the exchange of opening and rebuttal expert reports.

III. CONCLUSION

Accordingly, Samsung respectfully requests that leave be granted as to the supplemental expert reports of Dr. Foster and Dr. Perryman in their entirety (Exs. 1, 2).

Dated: November 18, 2024

Respectfully submitted,

By: /s/ Katherine D. Prescott

Ruffin B. Cordell

TX Bar No. 04820550

Michael J. McKeon

DC Bar No. 459780

mckeon@fr.com

Jared Hartzman

DC Bar No. 1034255

hartzman@fr.com

FISH & RICHARDSON P.C.

1000 Maine Avenue, SW, Ste 1000

Washington, D.C. 20024

Telephone: (202) 783-5070

Facsimile: (202) 783-2331

Thad C. Kodish

GA Bar No. 427603

tkodish@fr.com

Benjamin K. Thompson

GA Bar No. 633211

bthompson@fr.com

Jonathan B. Bright

GA Bar No. 256953

jbright@fr.com

Christopher O. Green

GA Bar No. 037617

cgreen@fr.com

Noah C. Graubart

GA Bar No. 141862

graubart@fr.com

Sara C. Fish

GA Bar No. 873853

sfish@fr.com

Nicholas A. Gallo

GA Bar No. 546590

gallo@fr.com

Vivian C. Keller (admitted *pro hac vice*)

GA Bar No. 651500

keller@fr.com

FISH & RICHARDSON P.C.

1180 Peachtree St. NE, Fl. 21
Atlanta, GA 30309
Telephone: (404) 892-5005
Facsimile: (404) 892-5002

Leonard E. Davis
TX Bar No. 05521600
ldavis@fr.com
Andria Rae Crisler
TX Bar No. 24093792
crisler@fr.com
Thomas H. Reger II
Texas Bar No. 24032992
reger@fr.com
FISH & RICHARDSON P.C.
1717 Main Street, Suite 5000
Dallas, TX 75201
Telephone: (214)747-5070
Facsimile: (214) 747-2091

John-Paul R. Fryckman (*pro hac vice*)
CA Bar No. 317591
FISH & RICHARDSON P.C.
12860 El Camino Real, Ste. 400
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Katherine D. Prescott (*pro hac vice*)
CA Bar No. 215496
prescott@fr.com
FISH & RICHARDSON P.C.
500 Arguello Street
Suite 400
Redwood City, CA 94063
Telephone: (650) 839-5180
Facsimile: (650) 839-5071

Kyle J. Fleming (*pro hac vice*)
NY Bar No. 5855499
kfleming@fr.com
FISH & RICHARDSON P.C.
7 Times Square, 20th Floor,
New York, NY 10036
Telephone: (212) 765-5070
Facsimile: (212) 258-2291

Melissa R. Smith
State Bar No. 24001351
Melissa@gillamsmithlaw.com
Harry Lee Gillam, Jr
gil@gillamsmithlaw.com
GILLAM & SMITH, LLP
303 South Washington Avenue
Marshall, Texas 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257

Michael E. Jones
State Bar No. 10929400
mikejones@potterminton.com
Shaun W. Hassett
State Bar No. 24074372
shaunhassett@potterminton.com
POTTER MINTON, P.C.
102 N. College Ave., Suite 900
Tyler, Texas 75702
Tel: (903) 597-8311
Fax: (903) 593-0846

Lance Lin Yang
Lanceyang@quinnmanuel.com
Kevin (Gyushik) Jang
CA Bar No. 337747
kevinjang@quinnmanuel.com
Sean S. Pak
CA Bar No. 219032
seanpak@quinnmanuel.com
**QUINN EMANUEL URQUHART & SULLIVAN,
LLP – LA**
Los Angeles, CA 90017 USA
Tel: (213) 443-3000
Fax: (213) 443-3100

Brady Huynh (admitted *pro hac vice*)
CA Bar No. 339441
bradyhuynh@quinnmanuel.com
**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5100

Jon Bentley Hyland
Texas Bar No. 24046131
jhyland@hilgersgraben.com
Grant K. Schmidt
Texas Bar No. 24084579
gschmidt@hilgersgraben.com
HILGERS GRABEN PLLC
7859 Walnut Hill Lane, Suite 335
Dallas, Texas 75230
Telephone: (972) 645-3097

ATTORNEYS FOR DEFENDANTS
SAMSUNG ELECTRONICS CO., LTD. AND
SAMSUNG ELECTRONICS AMERICA, INC.

CERTIFICATE OF CONFERENCE

Pursuant to Local Rules CV-7(h) and (i), I hereby certify that counsel of record for Samsung and Headwater have met and conferred. Headwater opposes this motion.

/s/ Katherine D. Prescott

Katherine D. Prescott

[REDACTED]

[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on November 18, 2024. As of this date, all counsel of record had consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

/s/ Katherine D. Prescott

Katherine D. Prescott